



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 532 OF 2007**

**FUNRCON LIMITED.....PLAINTIFF APPLICANT**

**-VERSUS-**

**THE ATTORNEY GENERAL.....DEFENDANT**

**RULING**

1) Furncon Ltd, the plaintiff/applicant herein, took out the motion dated 18<sup>th</sup> June 2020 and sought for the following orders *inter alia*:

***i. Spent***

***ii. THAT the Hon. Justice Serгон do recuse himself with all his orders from any further hearing or handling of this matter or any other matter which touches on the plaintiff or its directors herein.***

***iii. THAT the court file be placed before any other judge of equal jurisdiction in the Division for further orders and directions.***

***iv. THAT the costs of this application be provided for.***

2) The motion is supported by two affidavits sworn by Solomon Njoroge Kiore, the plaintiff's Managing Director.

3) The defendant did not file any response to the motion despite having been served with the same. This court directed the motion to be determined by written submissions.

4) I have considered the grounds stated on the motion and the facts deponed in the supporting and supplementary affidavits. I have also considered the written submissions plus the authorities cited. It is the submission of the applicant that this court (Sergon, J) has shown open bias and or incompetence when handling matters where the applicant is either prosecuting or defending.

5) It is pointed out that on 2<sup>nd</sup> April 2019, this court refused to respect the court orders where the applicant was withdrawn from the proceedings or representation in this suit on an application made by the plaintiff dated 26.3.2019. It is alleged that this court made orders that are illegal and prejudicial to the plaintiff and his rights to justice thus subjecting the plaintiff to unnecessary fight with the judge.

6) The applicant further argued that there will be a miscarriage of justice if Justice Sergon continues to handle this matter or any other matter as he is already in war with the applicant on Nairobi H.C.C.C no. 80 of 1999. The plaintiff further averred that it is illegal for one Symon C. Yator a colonel and uninformed officer to have been given audience through the backdoor by this court. Mr. Solomon Njoroge Kiore, the Managing Director of the applicant also averred that he had brought to the attention of this court that Col. Yator should not have been given audience but this court ignored his protest.

7) It is further argued that this court acted with impunity by allowing Symon C. Yator a uninformed and colonel for DOD (KDF) to prosecute a civil suit in a civilian court whereas the Attorney General is the one vested with the mandate as the principal legal adviser to the Government and had no power to employ uninformed armed forces against the constitution.

8) It is argued that by allowing Col. Yator to participate in these proceedings, this court personalized the dispute against the plaintiff therefore this court cannot deliver justice in accordance with the law hence the only option is for Justice Sergon to recuse himself from hearing this matter or any other case touching on the plaintiff or its directors.

9) The applicant further pointed out that this court dealt with HCCC no. 80 of 1999, a matter which the court had no jurisdiction to entertain since it is a matter belonging to the Environmental and Land Court.

10) Having considered the material placed before this court, it is clear in my mind that the plaintiff/applicant's substantive prayer is for this court to recuse itself from this matter and any other case touching on the plaintiff.

11) It is alleged that the court is biased and incompetent. It is also stated that this court has previously handled HCCC no. 80 of 1999 where this court made orders which were not favourable to the applicant. It is apparent from the applicant's averments and submissions that the applicant has merely claimed that this court is biased without giving the particulars of bias. The fact that this court made decisions against the applicant does not in any way manifest any evidence of bias on its part. In such cases it is open to the applicant to impugn those decisions on appeal. In the end that the applicant has failed to establish evidence of bias and incompetence on the part of the court.

12) Consequently, the applicant's motion dated 18<sup>th</sup> June 2020 is found to be without merit. The same is dismissed with costs abiding the outcome of this suit.

**Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 6<sup>th</sup> day of November, 2020.**

.....

**J. K. SERGON**

**JUDGE**

**In the presence of:**

..... **for the Plaintiff**

..... **for the Defendant**